

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kaitlin Campbell	Team: Squad #13	CCRB Case #: 201709961	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/13/2017 4:00 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 4/13/2019	EO SOL 4/13/2019	
Date/Time CV Reported Fri, 11/24/2017 11:35 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 12/01/2017 9:08 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Conway	19710	958429	075 PCT
2. POM John Andree	19634	958252	075 PCT
3. POM Nowaiz Rasool	05482	961150	075 PCT
4. POM Sean Walsh	07614	961437	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Andree	Force: Police Officer John Andree pointed his gun at § 87(2)(b)	§ 87(2)(b)
B.POM Nicholas Conway	Force: Police Officer Nicholas Conway pointed his gun at § 87(2)(b)	§ 87(2)(b)
C.POM Sean Walsh	Force: Police Officer Sean Walsh pointed his gun at § 87(2)(b)	§ 87(2)(b)
D.POM Nowaiz Rasool	Force: Police Officer Nowaiz Rasool pointed his gun at § 87(2)(b)	§ 87(2)(b)
E.POM John Andree	Abuse: Police Officer John Andree entered § 87(2)(b)'s room at § 87(2)(b) in Brooklyn.	§ 87(2)(b)
F.POM Nicholas Conway	Abuse: Police Officer Nicholas Conway entered § 87(2)(b)'s room at § 87(2)(b) in Brooklyn.	§ 87(2)(b)
G.POM John Andree	Abuse: Police Officer John Andree searched § 87(2)(b)'s room at § 87(2)(b) in Brooklyn.	§ 87(2)(b)
H.POM Nicholas Conway	Abuse: Police Officer Nicholas Conway searched § 87(2)(b)'s room at § 87(2)(b) in Brooklyn.	§ 87(2)(b)
I.POM Nicholas Conway	Discourtesy: Police Officer Nicholas Conway spoke discourteously to § 87(2)(b)	§ 87(2)(b)
J.POM Nicholas Conway	Off. Language: Police Officer Nicholas Conway made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)

Case Summary

On November 24, 2017, § 87(2)(b) called 911, was transferred to the NYPD Internal Affairs Bureau, and filed this complaint (original log #17-46802). A spinoff was generated (log #2017-47226) and forwarded to the CCRB on December 1, 2017.

On October 13, 2017, § 87(2)(b) was arriving home to § 87(2)(b) in Brooklyn. § 87(2)(b) was renting a room in the basement of § 87(2)(b) from § 87(2)(b) the owner of the house, with whom § 87(2)(b) was having a dispute. At approximately 4:00 p.m., § 87(2)(b) entered § 87(2)(b) through a side door leading to the basement, without having any interaction with § 87(2)(b).

§ 87(2)(b) unlocked her room, entered her room, got undressed, wrapped a towel around her, grabbed her phone and keys, locked the door to her room, and walked across a small common area to a bathroom. § 87(2)(b) entered the bathroom and got into the shower.

Shortly after, Police Officers Nicholas Conway, John Andree, Sean Walsh, and Nowaiz Rasool of the 75th Precinct arrived at § 87(2)(b) in response to a 911 call from § 87(2)(b) saying that § 87(2)(b) had hit her § 87(2)(b) daughter and then threatened her while holding a knife. The officers entered the basement with § 87(2)(b)'s consent.

§ 87(2)(b) opened the door to the bathroom about three inches and looked into the dark basement common area. PO Andree, PO Conway, PO Walsh, and PO Rasool turned toward § 87(2)(b) and pointed their guns at her (**Allegations A-D: Abuse of Authority**, § 87(2)(g) § 87(2)(b) exited the bathroom in a towel. PO Andree and PO Conway entered § 87(2)(b)'s bedroom (**Allegations E and F: Abuse of Authority**, § 87(2)(g) PO Conway and PO Andree searched § 87(2)(b)'s bedroom (**Allegation G and H: Abuse of Authority**, § 87(2)(g) PO Conway cursed at § 87(2)(b) throughout the incident, and called her a “nigger” (**Allegation I: Discourtesy**, § 87(2)(g) § 87(2)(b) (**Allegation J: Offensive language**, § 87(2)(g) § 87(2)(b).

§ 87(2)(b) was arrested for § 87(2)(b) § 87(2)(b).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer John Andree pointed his gun at § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Nicholas Conway pointed his gun at § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Sean Walsh pointed his gun at § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Nowaiz Rasool pointed his gun at § 87(2)(b)

It is undisputed that § 87(2)(b) called 911 and told the dispatcher § 87(2)(b) had just hit her daughter and was holding a knife, and that the call that all of the officers received reported an “assault in progress” involving a knife (Board Review 01)(Board Review 02).

According to § 87(2)(b) she partially opened the bathroom door, and PO Conway, PO Andree, PO Walsh, and PO Rasool, pointed their guns at her.

All four officers said they arrived to the location at about the same time and spoke with § 87(2)(b) on the front steps while § 87(2)(b)'s daughter stood beside her, bleeding from her nose. § 87(2)(b) told the officers § 87(2)(b) was a basement tenant of hers, that she had hit her daughter and then pointed a knife at her, and that she was currently in the basement. PO Walsh and PO Rasool said § 87(2)(b) gave a description of § 87(2)(b) and told the officers § 87(2)(b) was the only person in the basement at that time.

All four officers said they entered the basement and heard the shower running, assumed § 87(2)(b) was in the shower, and approached the bathroom door. All four officers said § 87(2)(b) was considered under arrest at that point. All four officers said an officer knocked on the door and possibly yelled, "Police" or, "Open the door," and that § 87(2)(b) opened the door herself.

PO Andree said that, when he entered the basement, he considered whoever was behind the bathroom door a "threat," and he therefore had his gun drawn and pointed at the ground. PO Andre denied pointing his gun at § 87(2)(b).

PO Conway did not remember whether he had his gun pointed at the bathroom door or § 87(2)(b) after he entered the basement.

PO Walsh and PO Rasool denied drawing or pointing their guns at any point during the incident.

§ 87(2)(g) Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service, to place a person in custody, or to prevent escape from custody. The NOTE to the same procedure states, "the decision for an officer to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present" (Board Review 03).

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Allegation (E) Abuse of Authority: Police Officer John Andree entered § 87(2)(b)'s room at § 87(2)(b) in Brooklyn.

Allegation (F) Abuse of Authority: Police Officer Nicholas Conway entered § 87(2)(b)'s room at § 87(2)(b) in Brooklyn.

Allegation (G) Abuse of Authority: Police Officer John Andree searched § 87(2)(b)'s room at § 87(2)(b) in Brooklyn.

Allegation (H) Abuse of Authority: Police Officer Nicholas Conway searched § 87(2)(b)'s room at § 87(2)(b) in Brooklyn.

It is undisputed that § 87(2)(b) owns § 87(2)(b) that she has access to the basement common area, and that § 87(2)(b) had access to one room in the basement that only she had the keys to. § 87(2)(g)

According to § 87(2)(b) PO Conway pulled her out of the bathroom and she walked into the basement common area. PO Conway then asked § 87(2)(b) which room was hers and § 87(2)(b)

§ 87(2)(b) pointed out her bedroom door. PO Conway then tried to open the door and asked § 87(2)(b) why the door was locked. § 87(2)(b) said she then retrieved her keys from the bathroom and handed the keys to PO Conway. § 87(2)(b) denied telling PO Conway or any other officer that she did not want the officers to enter her room. PO Conway took § 87(2)(b)'s keys and PO Conway and PO Andree entered § 87(2)(b)'s room, lifted up her air mattress, and rifled through her laundry bags. PO Conway told § 87(2)(b) to step out of her room and she told PO Conway she wanted to change into her clothes and asked the officers what they were looking for. PO Conway told her the officers were looking for a knife and that she cut the little girl upstairs and was bleeding.

All four officers said § 87(2)(b) was considered under arrest before they interacted with her, and that after they knocked on the bathroom door she opened it and walked into the common area in a towel, voluntarily. All four officers said that an officer immediately told § 87(2)(b) she was under arrest for the 911 caller's allegations—that she hit and threatened a little girl with a knife. All four officers denied that § 87(2)(b) gave an officer the keys to her room so they could open the door.

According to PO Andree, § 87(2)(b) told the officer she wanted to go into her room and get dressed with the door closed. PO Conway told § 87(2)(b) she could not close the door to her room. PO Andree initially said that PO Conway then entered § 87(2)(b)'s room and held a towel up for her as she got dressed but later denied that any officer went into § 87(2)(b)'s room. PO Andree said the officers did not want § 87(2)(b) alone in her room because a knife was involved in the alleged crime. PO Andree said no officer searched § 87(2)(b)'s room. After § 87(2)(b) was placed in a car outside, PO Andree said the officers asked the 911 caller where the knife was, the 911 caller could not locate the knife, and so no knife was vouchered.

According to PO Conway, he told § 87(2)(b) to get dressed after he told her she was under arrest, § 87(2)(b) did not argue with him, opened the door to her room, and walked into her room. PO Conway said he entered the room after her, told § 87(2)(b) to keep her towel on while she got dressed, and felt each clothing item § 87(2)(b) selected before she put it on, to search the clothing item for weapons. PO Conway said he did not search § 87(2)(b)'s room for the knife because he did not see the knife in plain sight.

PO Walsh and PO Rasool both said that no officer entered or searched § 87(2)(b)'s room but that one officer—they could not remember who—stood in the doorway while § 87(2)(b) got dressed. Neither PO Walsh nor PO Rasool knew whether the knife was found, where it was found if so, and whether it was vouchered.

In *People v. Scott*, the New York Court of Appeals held that once an emergency is over, the police cannot continue to search for evidence without a warrant (133 A.D.3d. 794 (2d Dep't 2010))(Board Review 04).

§ 87(2)(g)

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Allegation (I) Discourtesy: Police Officer Nicholas Conway spoke discourteously to § 87(2)(b)

Allegation (J) Offensive Language: Police Officer Nicholas Conway made remarks to § 87(2)(b) based upon race.

According to § 87(2)(b)'s phone statement, she heard a voice she did not recognize say, "Open the fucking door," while she was in the bathroom, which caused her to open the door and see the officers pointing their guns at her. In her in-person statement, however, § 87(2)(b) did not account for that voice and said PO Conway said, "What the fuck do you got behind your back?" immediately as she opened the bathroom door. In both statements, § 87(2)(b) said PO Conway said, "You know what the fuck you did," after she asked him what he was talking about. In her phone statement, after PO Conway had allegedly pulled her out of the bathroom, he said, "What the fuck do you have in there?" In her in-person statement, she alleged PO Conway repeated, "You know what the fuck you did," then asked her what room was hers, and then said, "Why the fuck is the door locked?" In both of her statements, § 87(2)(b) said PO Conway said, "I'll let you walk out of here butt-ass naked," and in her in-person statement added that he said, "You ain't got nothing I ain't never seen before," referring to her body parts. In her phone statement, § 87(2)(b) said that, when the officers had placed her in the back seat of the car, PO Conway called § 87(2)(b) "dumb," and an "asshole," and told her she was "fucking fucked." In her in-person statement, § 87(2)(b) said PO Conway said, "Fuck you nigger."

PO Conway denied making all of the specific statements alleged and denied using profanity with § 87(2)(b) generally. PO Andree, PO Walsh, and PO Rasool denied that PO Conway said the specific statements and all said no officer used profanity with § 87(2)(b).

Patrol Guide Procedure 203-09 states officers must be courteous and respectful when dealing with members of the public (Board Review 05).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to two CCRB complaints and has been named as a victim of ten allegations, all of which are in this case (Board Review 06).
- PO Conway has been a member of service for two years and has been a subject in two CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- PO Andree has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Rasool has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Walsh has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation due to the arrest.
- The undersigned investigator submitted a FOIL request to determine whether a Notice of Claim was filed in this case and she will attach the response from the Office of the Comptroller to the case file upon its receipt to the agency.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED].

Squad No.: 13

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date